

8 *Official Opinions of the Compliance Board 125 (2013)*

- ◆ **Notice Requirements – Timing – Practices permitted**
 - ◇ Publication in Maryland Register one month before the meeting
- ◆ **Notice Requirement – Method – Practices permitted**
 - ◇ Posting notice in Maryland Register
- ◆ **Minutes – Procedures – Practices permitted**
 - ◇ Adoption by e-mail if the practice of adopting them in meetings would result in unreasonable delay
- ◆ **Minutes – Procedures – Practices in violation**
 - ◇ Practice of adopting minutes several months later, at the next meeting

*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

January 24, 2013

**Re: Northeast Maryland Waste Disposal Authority
/Michele J. Fluss**

We have considered the second complaint of Michele J. Fluss (“Complainant”) that the Northeast Maryland Waste Disposal Authority (“Authority”) violated the requirements of the Open Meetings Act (the “Act”) that public bodies give reasonable advance notice of their meetings and adopt minutes promptly. We discussed those requirements in 8 *OMBC Opinions* 111 (2012)¹ and do not repeat that discussion here.

On the subject of notice, Complainant complains about both the timing and the method of notice given for the Authority’s November 14, 2012 meeting. With respect to timing, she alleges that the Authority violated the Act by posting notice of its November 14, 2012 meeting in the October 19, 2012 issue of Maryland Register and not in the November 2, 2012 issue, which was the one that immediately preceded the meeting. While notice in both issues might have been ideal, the publication of notice four weeks before a meeting is not so removed from the meeting date as to constitute a violation of the Act.

¹ Available at <http://www.oag.state.md.us/Opinions/Open2012/8omcb111.pdf>.

We turn to the methods by which the Authority now gives notice. In 8 *OMBC Opinions* 111, which we issued on September 26, 2012, we “encourage[d] the Authority to post its meeting notices on its website and use the Maryland Register or ‘any other reasonable method’ of giving notice. See § 10-506(c).” Complainant now complains that the Authority did not give notice, either on its website or by a press release, that it would use the Maryland Register for its notices. That allegation does not state a violation of the Act. Units of the State government “may give notice . . . by publication in the Maryland Register,” or, “if the public body has given notice that this method will be used,” by posting the notice on its website or at a “convenient public location at or near the place of business.” State Government Article (“SG”), § 10-506(c). The Authority thus is not required to give notice on its website that it will also post notices in the Maryland Register. The Authority also states that it will post future meetings on its website “as soon as [they] are scheduled,” and its website now lists, under its heading for “quick links,” a link for the “date/time/place” of Authority board meetings. In sum, the Authority’s new practices comport with the opinion we issued in September, and its use of the Maryland Register for the November 14 meeting complied with the Act.

On the subject of the timely adoption of minutes, Complainant complains that the Authority acted too slowly on our September 26 opinion. There, we stated that “a routine delay of several months [is] unreasonable” and that minutes should be approved by circulation among the members of a public body when the public body does not meet often enough to approve them promptly in an open meeting. 8 *OMBC Opinions* at 113. The minutes in question here are those of the Authority’s June 25 and August 10, 2012 meetings. The Authority’s staff advised Complainant that the Authority would adopt both sets of minutes at its November 14 meeting and would also announce new procedures for adopting minutes by e-mail from November 14 on. The Authority did both; in addition to adopting the minutes on November 14, it adopted a new schedule for the adoption of minutes, via e-mail and within approximately four to six weeks of the meeting, depending on the need for revisions. While the Authority’s adoption of the June and August minutes was impermissibly slow, its new procedures respond to the principles set forth in 8 *OMBC Opinions* 111. Particularly, the Authority’s statement that “minutes will now be approved via email, as soon as possible after the meeting” responds to the requirement in SG § 10-509(b) that “[a]s soon as practicable after a public body meets, it shall have written minutes of its session prepared.”

We add one thought: our encouragement, only to public bodies that meet infrequently, to adopt minutes by e-mail should not be taken either as an encouragement to regularly-meeting public bodies to adopt minutes that way or as our approval of any more general practice of taking actions by e-mail. As we have stated before, the practice of taking actions by e-mail does not serve the goal of the Act that public business be conducted publicly. The distinction between the adoption of minutes by e-mail when a public body meets rarely and any broader use of the practice is simple: the prompt availability of minutes serves the interest of transparency, though at

some sacrifice to the ability of the public to observe the public body's discussion of the draft, while the discussion of other issues by e-mail serves no goal of the Act.

In conclusion, the Authority did not violate the Act with respect to the notice it gave of its November 14, 2012 meeting, and we commend its compliance with the guidelines we gave in our earlier opinion. The Authority's adoption of its June and August minutes was not timely under the Act and did not comport with our opinion, but its new procedures are responsive to the opinion and address the practice that resulted in those delays.

Open Meetings Compliance Board

*Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio Morales, Esquire*